

**Attachment 2
(Sample Subcontract Only)**

SUBCONTRACT NO. PRO FORMA

UNDER

PRIME CONTRACT NO. DE-AC36-08GO28308

CONTRACTING PARTY: ALLIANCE FOR SUSTAINABLE ENERGY, LLC
MANAGEMENT AND OPERATING CONTRACTOR FOR THE
NATIONAL RENEWABLE ENERGY LABORATORY ("NREL")

SUBCONTRACTOR: *

ADDRESS: *

SUBCONTRACT TITLE: " " " " " "

TYPE OF SUBCONTRACT: LABOR HOUR AND EXPENSES WITH OPTIONS

PERIOD OF PERFORMANCE: BASIC: *** THROUGH ***
OPTION I: *** THROUGH ***
OPTION II: *** THROUGH ***
OPTION III: *** THROUGH ***
OPTION IV: *** THROUGH ***

SUBCONTRACT AMOUNT: BASIC: \$***.00
OPTION I: \$***.00
OPTION II: \$***.00
OPTION III: \$***.00
OPTION IV: \$***.00
\$***.00

PAYMENT TERMS: NET 30

**SUBCONTRACTOR'S
REMITTANCE NAME
AND ADDRESS:** *
*

**FUNDED AMOUNT AND
TASK CHARGE NUMBER:** \$*

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TO
SUBCONTRACT SCHEDULE

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SUBCONTRACT NO. *_*-*****_****

BETWEEN

**ALLIANCE FOR SUSTAINABLE ENERGY, LLC
MANAGEMENT AND OPERATING CONTRACTOR FOR THE
NATIONAL RENEWABLE ENERGY LABORATORY**

AND

SCHEDULE

INTRODUCTION

THIS SUBCONTRACT is effective upon execution by the Alliance for Sustainable Energy, LLC, manager and operator of the National Renewable Energy Laboratory and is between the Alliance for Sustainable Energy, LLC, whose principal office is located in Golden, Colorado and * (hereinafter called "Subcontractor"), whose principal offices are located in *.

The Alliance for Sustainable Energy, LLC (hereinafter called "Alliance") has entered into Contract No. DE-AC36-08GO28308 (hereinafter called "Prime Contract") with the Department of Energy (hereinafter called "DOE"), an agency of the U.S. Government (hereinafter called "Government"), for the management and operation of the National Renewable Energy Laboratory (hereinafter called "NREL"). All references to "NREL" in this subcontract shall mean the Alliance for Sustainable Energy, LLC.

This subcontract is entered into in furtherance of the performance of the work provided for in the Prime Contract.

AGREEMENT

NOW, THEREFORE, the parties hereto agree to the following terms and conditions:

ARTICLE 1 – THE WORK TO BE PERFORMED

- A. The Subcontractor shall perform the work generally described as "Environment, Health and Safety – Laser Safety and Related EHS Support Services", and specifically provided for in Appendix A, Statement of Work, attached hereto and made a part hereof, pursuant to the provisions of this subcontract.
- B. Specific deliverables, quantities, due dates, reporting requirements, and addresses are set forth in Appendix A hereto.

ARTICLE 2 – THE PERIOD OF PERFORMANCE

The period of performance under this subcontract shall be as follows:

Basic Period:	***	through	***
Option I:	***	through	***
Option II:	***	through	***
Option III:	***	through	***
Option IV:	***	through	***

NREL will make a decision, based on its sole judgment, whether or not to continue and exercise each Option of this subcontract, prior to the completion date of each period. If all Options are exercised by NREL, the total period of performance for the Basic Period and all Options will be ** (**) months. If NREL should decide not to exercise an Option, the subcontract shall be considered complete upon submittal of the final deliverables for the preceding Basic Period or Option.

ARTICLE 3 – PAYMENTS AND CEILING AMOUNT

- A. The Subcontractor shall perform the work called for under this subcontract on a labor hour and expenses basis. The Subcontractor shall receive compensation as specified hereunder, for all services and work performed, up to a ceiling amount for the Basic Period and Option I through Option IV as follows:

Basic Period:	\$***.00
Option I:	\$***.00
Option II:	\$***.00
Option III:	\$***.00
Option IV:	\$***.00
Total	\$***.00

The Subcontractor is authorized by NREL's execution of this subcontract to perform the basic period of this subcontract.

B. Labor – Hour Rate

1. The amounts shall be computed by multiplying the appropriate fixed hourly rates set forth below by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Invoices, in an original and one (1) copy, may be submitted once each month (or at more frequent intervals, if approved by the Subcontract Administrator), to the address in Article 4 – Invoices. The Subcontractor shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Subcontract Administrator. Promptly after receipt of each substantiated invoice, NREL shall, except as otherwise provided in this subcontract, and subject to the terms of Article 4 – Invoices, pay the invoice as approved by the Subcontract Administrator. Further, the Subcontractor shall not deviate from the estimated number of hours set forth below by specific labor category by ten (10) percent plus or minus without advance written approval of the Subcontract Administrator.

The fixed hourly rates and estimated hours for this subcontract are as follows:

<u>Labor Category</u>	<u>Fixed Hourly</u>	<u>Rate Estimated Hours</u>
Basic Period		
Principal Investigator	\$***	***
Option I		
Principal Investigator	\$***	***
Option II		
Principal Investigator	\$***	***
Option III		
Principal Investigator	\$***	***
Option IV		
Principal Investigator	\$***	***

2. After payment of 80 percent of the total ceiling amount, the Subcontract Administrator may withhold further payment of allowable time and expenses until a reserve is set aside in an amount that the Subcontract Administrator considers necessary to protect NREL's interest. This reserve shall not exceed one percent of the ceiling amount or \$10,000, whichever is less.
3. The fixed hourly rate set forth in this Article shall not be varied by virtue of the Subcontractor having performed work on an overtime basis, unless such overtime was specifically authorized in advance in writing by the Subcontract Administrator. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Subcontract Administrator, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this subcontract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Subcontract Administrator.

C. Expenses

1. Travel and other expenses shall be reimbursed based upon substantiating documentation and a determination of allowability, allocability, and reasonableness. The Subcontractor shall obtain economical and reasonable travel expense. For example, coach airfare, meals/incidental expenses (M&IE) at applicable federal government rates, and when possible, lodging accommodations that are within applicable federal government rates. If meals are provided as part of a conference/meeting, the subcontractor shall deduct the cost of the meal from the M&IE claimed on the invoice.
2. The allowability of expenses shall be determined by the Subcontract Administrator in accordance with Part 31 of the Federal Acquisition Regulation as supplemented by Part

931 of the Department of Energy Acquisition Regulation in effect on the execution date of this subcontract.

3. To the extent able, the Subcontractor shall –
 - a. Obtain required items at the most advantageous prices available with due regard to securing prompt delivery of satisfactory required items; and
 - b. Take all cash and trade discounts, rebates, allowances, credits, commissions, and other benefits. When unable to take advantage of the benefits, the Subcontractor shall promptly notify the Subcontract Administrator and give the reasons. Credit shall be given to NREL for cash and trade discounts, rebates, allowances, credits, commissions, and other amounts that have accrued to the benefit of the Subcontractor, or would have accrued except for the fault or neglect of the Subcontractor. The benefits lost without fault or neglect on the part of the Subcontractor, or lost through fault of NREL, shall not be deducted from gross costs.

D. Cost

1. It is estimated that the total cost to NREL for the performance of this subcontract shall not exceed the ceiling amount set forth in this article and the Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within such ceiling amount. If at any time the Subcontractor has reason to believe that the hourly rate payments and expenses that will accrue in performing this subcontract in the succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling amount in the schedule, the Subcontractor shall notify the Subcontract Administrator giving a revised estimate of the total ceiling amount to NREL for performing this subcontract with supporting reasons and documentation. If at any time during this subcontract, the Subcontractor has reason to believe that the total ceiling amount to NREL for performing this subcontract will be substantially greater or less than the stated ceiling amount, the Subcontractor shall so notify the Subcontract Administrator, giving a revised estimate of the total ceiling amount for performing this subcontract, with supporting reasons and documentation. If at any time during performing this subcontract, NREL has reason to believe that the work to be required in performing this subcontract will be substantially greater or less than the stated ceiling amount, the Subcontract Administrator will so advise the Subcontractor, giving a revised estimate of the total amount of effort to be required under the subcontract.

E. Ceiling Amount

1. NREL shall not be obligated to pay the Subcontractor any amount in excess of the ceiling amount set forth in this article, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling amount set forth in this article, unless and until the Subcontract Administrator shall have notified the Subcontractor in writing that the ceiling amount has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling amount for performance under this

subcontract.

F. Audit

1. At any time before final payment under this subcontract the Subcontract Administrator may request audit of the invoices and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Subcontract Administrator not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the invoice designated by the Subcontractor as the "completion invoice" and substantiating documentation, and upon compliance by the Subcontractor with all terms of this subcontract (including, without limitation, terms relating to release of claims, terms relating to patent clearance, and the terms of Article 4 - Invoices), NREL shall promptly pay any balance due the Subcontractor. The completion invoice and substantiating documentation, shall be submitted by the Subcontractor as promptly as practicable following completion of the work under this subcontract, but in no event later than one (1) year (or such longer period as the Subcontract Administrator may approve in writing) from the date of completion.

ARTICLE 4 – INVOICES

A. Invoices

1. Invoices for work accomplished under this subcontract shall be submitted in an original and one copy to:

National Renewable Energy Laboratory
Attn: *, MS *
1617 Cole Boulevard
Golden, CO 80401-3305
2. To facilitate processing and payment each invoice must contain the following information 1) date of invoice; 2) subcontract number that appears on the cover sheet of this subcontract; 3) level of effort (number of hours) expended and expenses as separate line items; 4) total amount of invoice; and 5) any other information or documentation required by other provisions of this subcontract. When on authorized travel, a per diem amount for meals and incidental expenses (M&IE) will be made to the Subcontractor in lieu of reimbursement for actual expenses for M&IE. Expense receipts for M&IE will not be accepted by NREL. The per diem rates by location can be found at www.gsa.gov. Payments under this subcontract shall be made in accordance with this article and the payment terms. Payments will be made to the Subcontractor's remittance name and address shown on the cover sheet of this subcontract. The NREL Subcontract Administrator may determine that a condition precedent to final payment under this subcontract requires the receipt of a final executed Release of Claims from the subcontractor and the receipt of any required patent clearance from DOE.
3. The payment terms of this subcontract shall mean net days from the date of receipt of an acceptable invoice or the date of receipt and acceptance of all deliverables, reporting

requirements or closeout documentation for the period covered by the invoice, whichever is later.

4. An authorized representative of the Subcontractor shall sign the following certification on each invoice submitted for payment:

“I certify that this invoice is correct and proper for payment, and reimbursement for this time and the expenses has not and will not be received under any other Government contract or subcontract or other source of Government funds.

Authorized Official

Date”

5. The Subcontractor is hereby notified that NREL may withhold payment on invoices submitted, if the Subcontractor has failed to comply with or is delinquent in the submission of the reporting or deliverable requirements under this subcontract, until such time as the Subcontractor has complied or submitted such reporting or deliverable requirements.

B. Release of Claims

The Subcontractor shall execute and deliver at the completion of this subcontract, a release of claims discharging the Government and NREL, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this subcontract, subject only to the following exceptions:

1. Specified claims, in stated amounts or in estimated amounts, where the amounts are not susceptible to exact statement by the Subcontractor.
2. Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing this subcontract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to the Subcontract Administrator not more than 6 years after the date of the release or the date of any notice to the Subcontractor that NREL is prepared to make final payment, whichever is earlier.
3. Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of NREL against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of this subcontract relating to patents.

C. Refunds

1. The Subcontractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Subcontractor (or any successor in interest to this Subcontract), that arise under the expenses portion of this subcontract and for which the Subcontractor has received reimbursement, shall be paid by the Subcontractor to NREL. The Subcontractor (or any successor in interest to this Subcontract), shall execute and deliver, at the time of and as a condition precedent to final payment under this subcontract, an assignment to NREL of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Subcontract Administrator.

ARTICLE 5 – OBLIGATION OF FUNDS AND FINANCIAL LIMITATIONS

- A. Pursuant to the clause entitled “Limitation of Funds” in Appendix B, the amount of \$*****.00 has been allotted and is available for payment of allocable and allowable costs under this subcontract.
- B. The amount of \$*****.00, presently obligated by NREL with respect to this subcontract, may be unilaterally increased by NREL by written notice to the Subcontractor, and may be decreased by written agreement of the parties by formal modification of this subcontract.
- C. The giving of any notice by either party under this article, the article entitled “The Period of Performance” in this Schedule, or the clauses entitled “Limitation of Funds” and “Limitation of Cost” in Appendix B, as applicable, shall not be construed to waive or impair any rights of NREL to terminate this subcontract under the provisions of the termination clause(s) contained in Appendix B.

ARTICLE 6 – LIMITATION OF FUNDS AND LIMITATION OF COST – SPECIAL (JULY 1999)

The Limitations of Funds clause contained in Appendix B shall be operable during such time that NREL incrementally allots additional funds to this subcontract as set forth in Article 3 - Payments and Ceiling Amount. (The Limitations of Cost clause shall be inoperable during such time.)

The Limitations of Cost clause contained in Appendix B shall become operable at such time that NREL allots to this subcontract an amount equal to the total estimated NREL cost set forth in Article 3 - Payments and Ceiling Amount. (The Limitations of Funds clause shall be inoperable at such time.)

ARTICLE 7 – PERSONAL PROPERTY MANAGEMENT AND CONTROL (JAN 2010)

- A. Except for the NREL Furnished Government Property listed in Paragraph (B) (1) below, the estimated cost or price set forth in Article 3 includes funds set aside specifically for the acquisition of the personal property shown below and such funds may not be used for any other purpose. NREL shall not be obligated to reimburse the Subcontractor for personal property acquisition costs or prices that are in excess of the total amount specified in this Article.
- B. Identification of and title to Government Property
 1. NREL Furnished Government Property. The following Government Property is furnished to the Subcontractor by NREL in support of subcontract performance. The Government shall retain title in all NREL Furnished Government Property.

Item	<u>NREL Furnished Government Property</u> [e.g., nomenclature, manufacturer, model #,]	Category	Controlled? [Yes or No]	\$ Amount
#.				* * * * *

2. Subcontractor Acquired or Fabricated Government Property. The following Government Property shall be acquired or fabricated by the Subcontractor's expenditure of NREL cost reimbursement (includes NREL cost share) or NREL price payment (includes NREL price participation) in support of subcontract performance.

- a. Title to Subcontractor Acquired Government Property shall pass to and vest in the Government upon delivery of such acquired property.

Title to Subcontractor Fabricated Government Property shall pass to and vest in the Government upon the first occurrence of any of the following: (i) issuance of material for use in subcontract performance; (ii) commencement of processing or use of material in subcontract performance; or (iii) reimbursement of the cost or price of the material by NREL to the Subcontractor

Item	<u>Subcontractor Acquired or Fabricated Government Property</u> [e.g., nomenclature, manufacturer, model #,]	Category	Controlled? [Yes or No]	Estimated \$ Amount
#.				* * * * *

3. Insurance requirement for NREL Furnished Government Property and Subcontractor Acquired or Fabricated Government Property.

The Subcontractor shall, at its own expense, maintain and keep in force during the entire performance period of this subcontract property insurance equal to or greater than the amount of the NREL Furnished Government Property and the estimated amount of the Subcontractor Acquired or Fabricated Government Property listed in paragraphs B (1) and B (2) above.

Before commencing work under this subcontract, the Subcontractor shall obtain the required property insurance and shall maintain such required property insurance for the entire period of performance of this subcontract. The Subcontractor shall immediately notify the NREL Subcontract Administrator in the event of any termination, cancellation, reduction or other material change adversely affecting NREL's/Government's interest in the property insurance.

The Subcontractor shall require lower-tier Subcontractors with possession or control of NREL Furnished Government Property and Subcontractor Acquired or Fabricated Government Property under this subcontract to provide and maintain the same kinds and minimum amounts of property insurance required under this subcontract. The Subcontractor shall maintain a copy of all the lower-tier Subcontractors' proofs of property insurance, and shall make copies available to the NREL Subcontract Administrator upon request.

C. Identification of and title to Subcontractor's Personal Property.

1. Government Property with title vesting in Subcontractor. If explicitly listed below, title to Subcontractor Acquired or Fabricated Government Property shall pass to and vest in the Subcontractor in its capacity either as a (i) Nonprofit Educational Institution or (ii) Nonprofit Organization with a primary purpose to conduct scientific research.

Item	Government Property with title vested in the Subcontractor [e.g., nomenclature, manufacturer, model #,]	\$ Amount
#.		* ** *

2. Subcontractor Furnished Personal Property. The following personal property shall be furnished by the Subcontractor at the Subcontractor's private expense through Subcontractor cost share or Subcontractor price participation in support of subcontract performance. The Subcontractor shall retain title in all Subcontractor Furnished Personal Property.

Item	Subcontractor Furnished Personal Property with title retained. [e.g., nomenclature, manufacturer, model #,]	Estimated \$ Amount
#.		* ** *

3. Conditions placed on Subcontractor's use of Personal Property. Vesting title to Subcontractor Acquired or Fabricated Government Property in an Educational Institution or Nonprofit Organization with a primary purpose to conduct scientific research (C.1. above) or title retained by a Subcontractor in Subcontractor Furnished Property (C.2. above) shall be subject to the conditions below.
 - a. The Subcontractor shall not charge depreciation, amortization, or use charges for the Subcontractor's personal property listed in this Article to any other Federal Government contract, subcontract, cooperative agreement, or grant, either contemporaneously with this subcontract performance or in the future.
 - b. The Subcontractor's personal property identified in this Article shall be used for the benefit of research and development under this subcontract and any extension hereto.

D. Advance Notice Requirements.

Advance notification by the Subcontractor and formal written modification approval by the NREL Subcontract Administrator pursuant to the terms of the "Lower-tier Subcontracts" clause of Appendix B is required prior to the actual purchase of any personal property not listed in this Article.

The actual purchase of personal property listed in this Article has been approved as part of the award of this subcontract.

E. Invoice Requirements.

The Subcontractor shall identify and submit supporting documentation in accordance with the article entitled "Invoices" for all Subcontractor Acquired or Fabricated Government Property and Subcontractor Furnished Personal Property under this subcontract, regardless of title, ownership, possession, or control by the Subcontractor. The Subcontractor shall include, as applicable, the item nomenclature, manufacturer, model number, serial number, cost or price, applicable shipping and installation charges, and the purchase or fabrication date.

F. Property Management System Requirements.

The Subcontractor shall submit to the NREL Subcontract Administrator a written description of its approved Property Management System if the total amount of the NREL Furnished Government Property and Subcontractor Acquired or Fabricated Government Property listed in this Article is \$500,000.00 or more. Additionally, when the amount totals \$500,000.00 or more, the Subcontractor shall maintain an approved Property Management System for the accounting, control, protection, preservation, maintenance, use, and disposition of all property in its possession/control as listed in this Article.

The Subcontractor's Property Management System shall be subject to audit by the Government or NREL. The subcontractor's property records and the premises where any Government Property is located shall be accessible during reasonable business hours to the Government and NREL during the subcontract period of performance and such amount of time thereafter necessary to fulfill all NREL-directed closeout requirements following subcontract termination or completion.

The Subcontractor shall treat all Government Property in its possession and control in accordance with the "Government Property" clause of Appendix B and other requirements as contained in this subcontract.

G. Accountability Requirements.

During the subcontract period of performance and such amount of time thereafter necessary to fulfill all NREL-directed closeout requirements following subcontract termination or completion, the Subcontractor shall be accountable for all personal property in support of subcontract performance, regardless of ownership, title, possession, or control by the Subcontractor. For purposes of this Subcontract, "accountable" means the Subcontractor shall have adequate procedures for the accounting, control, protection, preservation, maintenance, use, and disposition of the personal property listed in this Article and such procedures shall be sufficient to identify, inventory, report, and certify the existence, location, and condition of the property listed in this Article.

H. Control of Government Property.

For purposes of this Subcontract, “control” means the Subcontractor shall affix a property identification NREL/DOE tag number to Government Property in accordance with the categories of controlled Government Property listed in this Paragraph and shall maintain such NREL/DOE tag number for the identification and recording of such Government Property.

1. Categories of Controlled Government Property. For purposes of determining whether the Subcontractor shall be responsible to control by affixing a property identification NREL/DOE tag number to Government Property under this Subcontract, the following categories of personal property shall be used:
 - a. “**Equipment** property”— Accountable controllable property with an acquisition cost of \$5,000, or greater.
 - b. “**Sensitive** property”— Property that requires special control and accountability because of its susceptibility to unusual rates of loss, theft, misuse, or due to national security and export control considerations. Examples include, but not limited to: computers, computer external peripherals and storage, printers, cameras, and field equipment.
2. Categories of Property NOT controlled. There is **no** requirement to affix a property identification DOE/NREL tag number to the property in the following categories and values of Government Property.
 - a. “**Equipment** property” with a value of \$4,999 or less.
 - b. “**Sensitive** property” not meeting the criteria listed in paragraph (H) (1) (b) above.
 - c. “**Software**” of any value.
 - d. “**Expendable** property” that are materials, which by their nature, are consumed during the course of the subcontract effort, regardless of value.

I. Inventory, Reporting, and Certification Requirements for ALL subcontracts.

Annually on the anniversary date of execution of this subcontract during performance of this subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator a total acquisition cost or price for Government Property in its possession and control and listed in this Article.

No later than September 30th of each even-numbered year during the performance of this subcontract, the Subcontractor shall conduct a physical inventory and shall submit to the NREL Subcontract Administrator a certified inventory and report on the existence, location, and condition of all Government Property in its possession and control and listed in this Article. An authorized official of the Subcontractor shall certify that such Government Property inventory is complete, current, and accurate.

Immediately upon the termination or completion of subcontract performance, the Subcontractor shall submit to the NREL Subcontract Administrator a certified inventory and report on the

existence, location, and condition of all Government Property in its possession and control as listed in this Article. An authorized official of the Subcontractor shall certify that such Government Property closeout inventory is complete, current, and accurate.

In addition to the inventories and reporting of Government Property required in this Article, the Subcontractor shall conduct physical inventories requested by NREL and the Government and shall comply with all reporting requirements requested by NREL or the Government.

J. Additional Inventory, Reporting, and Certification Requirements for COST TYPE subcontracts.

In addition to the requirements in Paragraph I above, if this is a cost-type subcontract, the Subcontractor shall submit to the NREL Subcontract Administrator within six months of execution of this subcontract a certified baseline inventory and report on the existence, location, and condition of all Government Property in its possession or control and listed in this Article. An authorized official of the Subcontractor shall certify that such Government Property baseline inventory is complete, current, and accurate.

K. Requirement to report shortage, loss, damage, or destruction of Government Property.

The Subcontractor shall report promptly to the NREL Subcontract Administrator any shortage, loss (including theft), damage, or destruction of Government Property in its possession or control and listed in this Article together with all the facts and circumstances of the shortage, loss, damage, or destruction. The Subcontractor shall cooperate with NREL representatives to complete missing or damaged Government Property reports.

L. Protection of Government's Interest in Government Property.

With respect to Government Property in the possession or control of the Subcontractor and listed in this Article, the failure to perform the requirements of this Article shall constitute a breach of this Subcontract, unless such failure to perform is beyond the control of the Subcontractor or any lower-tier Subcontractor and without the fault or negligence of either.

NREL shall notify the Subcontractor in writing of such failure to perform and the Subcontractor shall cure within ten (10) days after receipt of the notice from the NREL Subcontract Administrator specifying the failure. The NREL Subcontract Administrator may authorize in writing a longer period of time allotted for the Subcontractor to cure the failure to perform.

In the event the Subcontractor fails to cure within the allotted time, NREL reserves the right to acquire, under the terms and in the manner the NREL Subcontract Administrator considers appropriate, the physical inventory and report required under this Article for the existence, location, and condition of the Government Property in the possession or control of the Subcontractor and listed in this Article. Further, NREL reserves the right to accomplish the disposition of such Government Property under the terms and in the manner the NREL Subcontract Administrator considers appropriate.

The Subcontractor shall be liable to NREL for any excess costs incurred to acquire the physical inventory and report required under this Article for the existence, location, and condition of the Government Property in the possession or control of the Subcontractor and listed in this Article.

Further, the Subcontractor shall be liable to NREL for any excess costs incurred to accomplish the disposition of such Government Property. The rights and remedies of NREL/Government in this Article are in addition to any other rights and remedies provided by law or under this subcontract.

The NREL Subcontract Administrator may withhold all or any portion of payment of the price or allowable cost due to the Subcontractor under this subcontract until a reserve is set aside in an amount that the NREL Subcontract Administrator determines necessary to cover excess costs incurred to acquire the physical inventory and report and to accomplish the disposition of Government Property required under this Article. Notwithstanding any other terms or conditions contained in this schedule and Appendix B of this subcontract, NREL shall be entitled to set off any amount that NREL owes or may owe in the future to the Subcontractor (under this subcontract and any and all other collateral transactions between the Subcontractor and NREL) against any excess costs incurred to acquire the physical inventory and report and to accomplish the disposition of Government Property required under this Article.

ARTICLE 8 – APPLICABLE DOCUMENTATION

In addition to the terms and conditions contained in this Schedule, the following documents are attached hereto and made a part of this subcontract:

- A. Appendix A, entitled "Statement of Work", dated 03/05/10.
- B. Appendix B-6, entitled "Standard Terms and Conditions", dated 01/18/10.
- C. Appendix C-3, entitled "Intellectual Property Provisions", dated 10/22/98.
- D. Appendix D-1, entitled "Standard Terms and Conditions for Subcontracts in Excess of \$500,000", dated 10/01/08.
- E. Appendix E, entitled "Travel Requirements", dated 07/08/05.
- F. Appendix F, entitled "Small Business Subcontracting Plan", dated *** (if applicable).
- G. Subcontractor's technical proposal number (*) dated * together with any revisions, is hereby incorporated by reference. In the event there is a conflict between the Subcontractor's technical proposal and any other provisions of this subcontract, the latter shall prevail.

ARTICLE 9 – ORDER OF PRECEDENCE

Any inconsistency in this subcontract shall be resolved by giving precedence in the following order:

- A. This Schedule;
- B. Statement of Work (Appendix A);
- C. Standard Terms and Conditions (Appendix B-6);

- D. Intellectual Property Provisions (Appendix C-3);
- E. Standard Terms and Conditions for Subcontracts in Excess of \$500,000 (Appendix D-1);
- F. Travel Requirements (Appendix E);
- G. Small Business Subcontracting Plan (Appendix F) (if applicable);
- H. Other provisions of this subcontract whether incorporated by reference or otherwise; and
- I. The subcontractor's technical proposal, if incorporated in this subcontract by reference or otherwise.

ARTICLE 10 – RIGHTS TO PROPOSAL DATA

Except for technical data contained on pages (*) of the subcontractor's proposal dated ** which are asserted by the Subcontractor as being proprietary data, it is agreed that, as a condition of the award of this subcontract, and notwithstanding the provisions of any notice appearing on the proposal, the Government and NREL shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this subcontract is based.

ARTICLE 11 – SUBCONTRACT ADMINISTRATION RESPONSIBILITIES

- A. Signature Authority: This subcontract may only be modified by a formal modification signed by an authorized official of NREL.
- B. Subcontract Administration Responsibilities: The authorized official of NREL has designated ** as the Subcontract Administrator for this subcontract with the responsibilities for subcontract administration and negotiation of any modifications to this subcontract. The Subcontract Administrator's telephone number is 303-**.
- C. Technical Monitoring Responsibilities: The authorized official of NREL has designated ** as the Technical Monitor for this subcontract with the responsibilities of monitoring the technical work or services to be performed under this subcontract. The Technical Monitor does not have the authority to make any commitments or authorize any changes which may affect the subcontract's price, scope of work, terms, or conditions. Any such changes shall be referred to the Subcontract Administrator designated in Paragraph B above. The Technical Monitor's telephone number is 303-**.

ARTICLE 12 – KEY PERSONNEL

- A. It having been determined that the individuals, whose names appear below, are necessary for the successful performance of this subcontract, the Subcontractor agrees to assign or have assigned such individuals to the performance of the work under this subcontract and shall not reassign or remove any of them without the consent of the Subcontract Administrator by modification to this subcontract:

Name

Project Title

Telephone No.

*

*

*

- B. Whenever, for any reason, one or more of the key personnel designated above, is unavailable for assignment for work under this subcontract, the Subcontractor shall, with the approval of the Subcontract Administrator, replace such individual with an individual of substantially equal abilities and qualifications.

ARTICLE 13 – PUBLICITY RELEASE AND PUBLIC AFFAIRS

(domestic small business, educational institutions and other nonprofit organizations)

- A. Publicity release of any nature in connection with this subcontract shall be coordinated as provided in the “Public Affairs” clause of Appendix B. The Subcontractor shall not make without prior review and approval of the NREL Subcontract Administrator, any publicity release of any nature of general, non-technical information in connection with this subcontract. For purposes of this subcontract, general, non-technical information means any information concerning the existence of the subcontract, the identity of the parties, and the scope and general character of the research or technical activity. As used in this Article, “publicity release” does not include a lawful inspection of the Subcontractor’s records conducted pursuant to Federal or State public records access statutes. The Subcontractor may report specifics regarding the formation and execution of this subcontract in its internal publications without prior review and approval of the NREL Subcontract Administrator.
- B. Data rights are set forth in Appendix C hereof.

OR

ARTICLE 13 – PUBLICITY RELEASE AND PUBLIC AFFAIRS

(large businesses, state and local governments or foreign organizations)

- A. Publicity release of any nature in connection with this subcontract shall be coordinated as provided in the “Public Affairs” clause of Appendix B. The Subcontractor shall not make without prior review and approval of the NREL Subcontract Administrator, any publicity release of any nature of general, non-technical information in connection with this subcontract. For purposes of this subcontract, general, non-technical information means any information concerning the existence of the subcontract, the identity of the parties, and the scope and general character of the research or technical activity. As used in this Article, “publicity release” does not include a lawful inspection of the Subcontractor’s records conducted pursuant to Federal or State public records access statutes. The Subcontractor may report specifics regarding the formation and execution of this subcontract in its internal publications without prior review and approval of the NREL Subcontract Administrator.
- B. Data rights are set forth in Appendix C hereof. The Subcontractor should particularly note that all papers and documents that are required for submittal and distribution for patent clearance under this subcontract should first be submitted to the Department of Energy, Intellectual Property Law Division, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439 prior to distribution to the public. This requirement of patent clearance prior to publication of all Subcontractor’s reports is specifically required and set forth in Appendix C

hereof.

ARTICLE 14 – ALTERATIONS TO TERMS AND CONDITIONS

Appendix B-6 is hereby modified by adding the following clause thereto:

“CLAUSE 56 - ORGANIZATIONAL CONFLICTS OF INTEREST (SPECIAL) (MAY 2004) (Derived from DEAR 952.209-72 - JUNE 1997)

A. Purpose

The purpose of this clause is to ensure that the Subcontractor: (1) is not biased because of its financial, contractual, organizational, or other interests that relate to the work under this subcontract and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.

B. Scope

The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

1. Use of Subcontractor's Work Product

- a. The Subcontractor shall be ineligible to participate in any capacity in NREL or DOE contracts, subcontracts, or proposals therefore (solicited and unsolicited) that stem directly from the Subcontractor's work product under this subcontract for a period of five years after the completion of this subcontract. Furthermore, unless so directed in writing by the NREL Subcontract Administrator, the Subcontractor shall not perform any advisory and assistance services work under this subcontract on any of the Subcontractor's products or services or the products or services of another firm, if the Subcontractor is or has been substantially involved in the development or marketing of the firm's products or services. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on subcontracts for advisory and assistance services.
- b. If, under this subcontract, the Subcontractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort that is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the NREL Subcontract Administrator, in which case the restriction in this subparagraph shall not apply.

- c. Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard and commercial items to NREL or the Government.

2. Access to and use of information

- a. If the Subcontractor, in the performance of this subcontract, obtains access to information, such as NREL or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data that has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the NREL Subcontract Administrator it shall not:
 - (i) Use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (ii) Compete for work for NREL or the Government based on such information for a period of six (6) months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first;
 - (ii) Submit an unsolicited proposal to NREL or the Government that is based on such information until one year after such information is released or otherwise made available to the public; and
 - (iii) Release such information unless such information has previously been released or otherwise made available to the public by NREL or the Government.
- b. In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.
- c. The Subcontractor may use technical data it first produces under this subcontract for its private purposes consistent with subparagraphs (B) (2) (i) (a) and (d) of this clause and the patent, rights in data, and security provisions of this subcontract.

C. Disclosure after award

- 1. The Subcontractor agrees that if changes, including additions, to the facts disclosed by it prior to award of this subcontract occur during the performance of this subcontract, it shall make an immediate and full disclosure of such changes in writing to the NREL Subcontract Administrator. Such disclosure may include a description of any action that the Subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. NREL may, however, terminate the subcontract for

convenience if it deems such termination to be in the best interest of NREL and the Government.

2. In the event that the Subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the NREL Subcontract Administrator, NREL may terminate this subcontract for default.

D. Remedies

For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this subcontract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, NREL may terminate the subcontract for default, disqualify the Subcontractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this subcontract.

E. Modification

Request for a modification of the requirements under this clause shall be directed in writing to the NREL Subcontract Administrator and shall include a full description of the requested modification and the reasons in support thereof. If it is determined to be in the best interests of NREL and the Government, the NREL Subcontract Administrator will notify the Subcontractor in writing that such modification is accepted.

ARTICLE 15 – INTEGRATION

This subcontract contains the entire understanding between the parties, and there are no understandings or representations except those set forth or incorporated by reference herein. No subsequent modifications of this subcontract shall be of any force or effect unless in writing signed by a duly authorized official of NREL.

IN WITNESS WHEREOF, the parties hereto have executed this subcontract as of the date fully signed below.

ACCEPTED: *

AUTHORIZED: ALLIANCE FOR SUSTAINABLE
ENERGY, LLC

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE:

DATE:

SAMPLE